IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1402 of 1985

For Approval and Signature:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRASNPORT CORPN

Versus

PRANSHANKAR TRIBHOVANDAS VORA

Appearance:

1. First Appeal No. 1402 of 1985

MR MD PANDYA for Petitioner No. 1

MR JT TRIVEDI for Respondent No. 1-6

NOTICE SERVED for Respondent No. 7

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE THE CHIEF JUSTICE)

Through this appeal, award of the Motor Accident Claims Tribunal, Bhavnagar in MACP No. 128 of 1983 has been challenged by the appellant.

Maheshkumar (deceased) was studying in the First Year B. Com. at Bhavnagar. He had also joined NSS and NCC. The deceased had also appeared for typing test and was doing the course of English Short Hand. On 18.1.1983, at about 11.15 a.m., while the deceased riding on bicycle was proceedings from his boarding to the College, when he came near Atabhai Circle Road, one Bus baring No. GRT 7101 owned by the Gujarat State Road Transportation Corporation driven by the driver Dhirubhai came with an excessive sped, it dashed with the said Maheshkumar. As a result of the serious crush injuries, vital parts of the deceased were damaged and resulted in his death. Accordingly, claim for Rs.1,50,000.00 was made by the parents, brothers and sister of the deceased alleging that the bus was being driven rashly and negligently causing the accident, otherwise, it could have been avoided. The deceased was a promising student studying in First Year B.Com. He had also joined the NCC and NSS. Over and above that, he had also joined the course of English Short Hand and Typing. Therefore, there were every possibilities of his being engaged in service and maintaining the claimants.

With this accident, a promising boy has been done away.

The opponents have resisted the claim by filing written statement at Exh. 12. They denied the alleged rash and negligent driving of the driver. They have denied the relationship of the claimants with the deceased. As regards the accident, it was contended that the bus was being driven at a very slow speed and that the deceased suddenly attempted to cross the road even though he must have seen the bus coming from Takhteshwar Station side. It was also contended by the opponents that the deceased should not have tried to cross the road but he tried to cross the road, the bus driver immediately applied the brakes and took the bus aside but the deceased dashed with the rear part of the bus, sustained injuries which ultimately proved tobe fatal. It was submitted that had the deceased not attempted to cross the road, the accident would not have happened and the said deceased was liable for the said accident. It

has also been contended that the claim is highly exorbitant.

On the basis of the pleadings of the parties, the Claim Tribunal at Exh. 13, recorded the evidence and found that the accident took place as alleged and awarded the compensation of Rs.77,300.00 with interest at the rate of 6 % p.a. from the date of application till realization with proportionate costs within the period of three months from the date of award. The Claim Tribunal also directed that if the amount of award is not paid within the period of three months from the date of the award, the rate of interest shall be 12 % from the date of the award.

The appellant Gujarat State Road Transport Corporation is aggrieved by this award, therefore, it is challenged through this appeal. It is submitted that the award is vitiated by illegalities in not appreciating the evidence correctly and assessing the compensation in accordance with the sound principles applicable in such cases. It is submitted that precisely the deceased was responsible for the accident, therefore, the claimants should have held the deceased responsible for the accident or at least liable to some extent. Evidence on this aspect has been perused. Witness Ramkubhai Samatbhai has stated at Exh. 29 before the Tribunal that he himself is a student of the same college and he knew the deceased Maheshkumar. It was deposed by him that on the day of incident, he was proceeding from that road behind Maheshkumar and when Maheshkumar was hit by a bus. The tribunal accepted his evidence to the extent that the that the road was quite wide and the deceased was proceeding from the hostel to the College and the accident took place at the intersection of four roads. The chowk is about 50 to 60 ft. open as deposed by the said witness before the tribunal. Although the driver of the bus states that he tried to avoid the accident while going to the extreme side but the deceased was hit by the rear side of the vehicle, the deceased could have avoided the accident had he been careful to see the bus coming from the other side. From the totality of the evidence taken into consideration by the tribunal and examined by us, it is clear that the accident took place at the place which is wide enough and the bus driver could very well see the cyclist coming from the other side. He could have avoided the accident had he been careful in driving the vehicle. The fact that the brake marks are upto 77 ft. go to show that the bus was being driven negligently and with excessive speed which should not have been done since it was an intersection of four roads where people

move about on feet, on cycle, on small vehicles, bullock carts etc. In such circumstances and at such place, heavier responsibility is on the driver of the heavy vehicle to be careful in driving the heavy vehicle and drive the same with due care and caution. No attention was paid by the driver of the bus, therefore, accident has taken place. Moreover, it is noticeable that the driver has been found guilty in criminal case registered by the police in connection with the said case and he was punished for six months imprisonment. Consequently, it is not difficult to conclude that the driver was solely responsible for the accident and the deceased did not contribute to this accident.

Having come to the aforesaid conclusion, we are examining the next question with respect to the award of compensation. The tribunal has awarded an amount of Rs.77,300.00 as compensation with interest thereon at the rate of 6 % p.a. from the date of application till realization with proportionate costs within the period of three months from the date of award. The Claim Tribunal also directed that if the amount of award is not paid within the period of three months from the date of the award, the rate of interest shall be 12 % from the date of the award. For deciding the question of compensation, the tribunal has taken into consideration the fact that the petitioner was studying in First Year B. Com. Course. He was NCC Cadet and had also joined the NSS. He had taken English Short Hand Course, therefore, was a promising student. Obviously, he could have joined the services after completing the course and could have earned income. He was a bachelor. Taking into consideration these facts, the tribunal has assessed the income of the deceased at Rs.1,500.00 p.m. and deducted 2/3rd therefrom towards personal expenses and Rs.500.00 could be given to the claimants and the multiplier of 12 has been utilized and the sum amount has been awarded towards the loss of expectation of life, shock etc. The assessment of compensation cannot be said to be excessive. Therefore, the submission to the contrary is liable to be rejected. No other point is urged for our consideration.

Consequently we find no merit in this appeal and the same is dismissed. Amount deposited/invested be released to the claimants. No order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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